NG CHIM & 2 ORS.

v.

LOW BOON BENG

HIGH COURT MALAYA, MUAR
TAN SRI DATO' MOHD EUSOFF BIN CHIN SCJ
[CIVIL ACTION NO. 22-46 OF 1988]
14 MAY 1994

LAND LAW: Lands transmitted to plaintiffs and defendant as beneficiaries under intestacy - Lands transferred to defendant with knowledge of plaintiffs - Defendant cultivating lands without interference from plaintiffs - Falling out between 2nd plaintiff and defendant - Plaintiffs filing suit to recover lands 16 years after transfer - Whether suit time barred pursuant to s. 9 of the Limitation Act 1953.

STATUTORY INTERPRETATION: Limitation Act 1953, s. 9(1) & (2) - Limitation and exceptions - National Land Code 1965, ss. 340 & 341 - Whether there was any limitation period imposed by s. 340 - Whether s. 341 of the NLC and s. 9(2)(b) of the Limitation Act would apply to oust the provisions of s. 9(1) of the Limitation Act.

WORDS & PHRASES: "proprietor" - Section 5 NLC 1965.

Two pieces of undivided land were transmitted to the plaintiffs and defendant as beneficiaries under an intestacy. On 20 May 1972 the plaintiffs' undivided shares were registered in the defendant's name under a purported agreement to transfer the lands to him for RM3,000. The defendant cultivated the lands without any interference until a fight broke out between the 2nd plaintiff and the defendant resulting in the plaintiffs filing a suit against the defendant on 30 August 1988 for the recovery of the lands on the ground that they had not agreed to the transfer.

The Counsel for the defendant submitted that the suit was time barred under s. 9 of the Limitation Act 1953 (LA 1953). In reply, Counsel for the plaintiffs submitted that s. 341 of the National Land Code 1965 (NLC) and s. 9(2)(b) of the LA 1953 would apply to oust the provision of s. 9(1) of the LA 1953.

Held:

[1] Section 340(1) of the NLC guarantees the indefeasibility of title of any person registered as proprietor of any land unless he comes under the circumstances enumerated in s. 340(2). Section 9(2) of the LA 1953 specifically states that the limitation period under s. 9(1) is excluded if,for example, the NLC provides some other limitation period but s.340 does not provide that the person challenging the title of the registered proprietor must do so within any specified period. That being so, s. 9(1) of the LA 1953 applied and the plaintiffs had to bring the suit within 12 years from the date they first discovered the transfer of the lands to the defendant.

[2] Under s. 341 of the NLC and s. 9(2)(b) of the LA 1953, the plaintiff must currently be the registered proprietor of the land. Section 341 envisages a situation where the land is in the possession of a stranger, or a person without right or title who squats on the land without permission of the registered proprietor or the permission of a person entitled to an interest in the land. In such a case, the limitation period prescribed by s. 9(1) of the LA 1953 will not apply. In the present case the defendant was the registered proprietor and was therefore not a person in adverse possession of the lands. Consequently, s. 341 of the NLC and s. 9(2)(b) of the LA 1953 did not apply. In the circumstances the plaintiffs claim was time barred, being 4 years outside the limitation period.

[Plaintiffs' claim dismissed with costs].

Legislation referred to:
Limitation Act, s. 9(1) & (2)(b)
National Land Code, ss. 5, 340(1) & (2), 341

For the plaintiffs - A.K. Yeong; M/s. A.K. Yeong & Co.
For the defendant - Low Hop Bing; M/s. Low Hop Bing & Associates

JUDGMENT

Mohd Eusoff bin Chin SCJ:

The first plaintiff is the mother of the second and third plaintiffs, and also of the defendant.

The plaintiffs lived at Serom 6, Sungei Mati, Johor and the defendant at Serom 2 Sungei Mati, Johor.

Two pieces of land lots No. 2365 and No. 3335 Mukim Serom, Daerah Muar belonged to the husband of the first plaintiff and father of the other parties in this suit. When he died, these lands were then transmitted to the first plaintiff, $^3/_9$th undivided share, and to the other two plaintiffs and to the defendant $^2/_9$th share each.

This was the situation prior to May 1972.

On 20 May 1972 the plaintiffs' undivided shares were registered in the name of the defendant who said that he had paid RM3,000 to the other co-owners who had then agreed to transfer the lands to him. The defendant has, since 1972, been paying the quit rents and cultivating the lands without any interference from the plaintiffs until the plaintiffs filed this suit in 1988.

The plaintiffs alleged that they had not agreed to the transfer. They alleged that they had caused a search in the Land Office some 15 years later in 1987, and found the lands were registered in the defendant's name.

The evidence at the trial shows that the three plaintiffs knew of the transfer of the lands to the defendant on 20 May 1972 - (see affidavit tendered as Exh. P7 which was used in one of the applications in chambers and which was referred to in the trial). Further both the second and the third plaintiffs admitted during the trial that on 20 May 1972 they already knew that the lands were transferred to the defendant. Indeed all the plaintiffs had pleaded this fact in their re-amended statement of claim. The three plaintiffs then held a discussion but they decided not to lodge any report or take any legal action to recover the land because they thought it was a small matter. They did not even enter caveats on the lands, or file any suit to recover their shares.

Up to 1987 the relationship between the plaintiffs and the defendant remained very cordial and thick. By then the defendant and his brother, the second plaintiff, had jointly acquired another piece of land and both became co-owners. The defendant said that when he asked the second plaintiff to pay his share of the quit rent and expenses to develop the newly acquired land, the second plaintiff refused and asked the defendant to subdivide the land. However, the second plaintiff had refused to pay the expenses for the subdivision. So the defendant and the second plaintiff had a quarrel and in the fight that ensued the defendant used an iron rod and broke his brother, the second plaintiff's leg. This occurred on 28 July 1987. Then on 19 August 1987 the second plaintiff lodged a police report (Exh. P6) to say that on 18 August 1987 he had gone to the Land Office, Muar and discovered from the land register that both the lands (lots 2365 and 3335) Mukim Serom were registered in the defendant's name as sole proprietor, and alleged in the report that the defendant had thereby cheated the plaintiffs.

One year after the fight, i.e. on 30 August 1988, the three plaintiffs filed this suit for a declaration that the transfer by the three plaintiffs of their shares in the two pieces of land was null and void, and that the plaintiffs remained the true owners of the lands in their respective proportions as before 20 May 1972.

At the conclusion of the trial, the learned Counsel for the defendant submitted that, as pleaded in paragraph 6 of the amended statement of defence, the suit ought to be dismissed because it was filed outside the limitation period as provided by s. 9 of the Limitation Act 1953, which states:

> Limitation of actions to recover land.
>
> 9. (1) No action shall be brought by any person to recover any land after the expiration of twelve years **from the date on which the right of action accrued** to him, or if it first accrued to some person through whom he claims, to that person.
>
> (2) **Nothing in this section** or in section 11(2) of this Act **shall be deemed** to affect the provisions of the Government Proceedings Ordinance 1956, or the National Land Code (Penang and Malacca Titles) Act 1963, or **to apply** -
>
> (a) xxx xxx xxx
>
> (b) to any person **registered** under or by virtue of the provisions of the National Land Code 1965, or the National Land Code (Penang and Malacca Titles) Act 1963, **as the proprietor of the land sought to be recovered,** or to any person claiming through a person so registered, **except to the extent that such Code** or Act **so provides or permits.**
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> [emphasis added]

It would have been a straight forward case under s. 9(1) of the Limitation Act because the evidence shows that on 20 May 1972 the plaintiffs were aware and knew of the fact that the defendant had become the sole registered proprietor of the two pieces of land. The date, 20 May 1972 is the date on which the right of action accrued to the plaintiffs, and when in 1988 they

filed this suit for a declaration that they were still the owners of their respective shares in the lands, 16 years had elapsed, i.e. they were 4 years outside the limitation period.

The plaintiffs had amended and re-amended their statement of claim. In paragraph 8 of their re-amended statement of claim, they stated:

> 8. The plaintiffs then discovered for the **first time** that the respective shares of the plaintiffs have been transferred to the defendant **on 20 May 1972,** who is now the sole registered owner of the land.

It is necessary to first deal with the provisions of s. 340 of the National Land Code, which states:

> 340. (1) The title or interest of any person or body **for the time being registered as proprietor of any land,** or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be **indefeasible.**
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> (2) The title or interest of any such person or body shall not be indefeasible -
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> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
>
> (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2) -
>
> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
> (b) any interest subsequent granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
>
> Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

Section 340(1) of the National Land Code, therefore, guarantees the indefeasibility of title of any person registered as proprietor of any land. His title may, however, be defeated under circumstances enumerated in s. 340(2) National Land Code. Section 9(2) of the Limitation Act 1953 specifically states that the limitation period under s. 9(1) is excluded if, for example, the National Land Code provides some other limitation period. But s. 340 National Land Code does not provide that the person challenging the title of the registered proprietor must do so within any specified period. Therefore, I find that there is no limitation period imposed by s. 340 of the National Land Code on the challenger of the title of the registered proprietor. That being so, then by virtue of s. 9(2)(b) the provision of s. 9(1) of the Limitation Act shall apply, i.e. the plaintiffs must bring the suit within the period of the 12 years from the time they **first discovered** that the defendant had transferred the two lands to himself. As I have stated earlier, the plaintiff had been sleeping on their rights for 16 years before commencing this action against the defendants. The plaintiffs did not even bother to enter a caveat on the lands when, on 20 May 1972, they first discovered that the lands had been transferred to the defendant. The suit was only filed after the defendant broke his brother, the second plaintiff's leg which incident had started the bitter relationship between the plaintiffs and the defendant.

It was submitted by the learned Counsel for the plaintiffs that s. 341 of the National Land Code and s. 9(2)(b) of the Limitation Act 1953, would apply to oust the provision of s. 9(1) of the Limitation Act. For ease of reference I quote s. 341 National Land Code here and it states:

> 341. Adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing or any action for the recovery thereof by **the proprietor** or any person or body entitled to an interest therein, and accordingly, the Limitation Act 1953, shall in no circumstances operate to extinguish any title to, or interest in, land.

By s. 5 of the National Land Code "'proprietor" means any person or body **for the time being** registered as the proprietor of any alienated land.'

It is clear that s. 341 of the National Land Code is in consonant with s. 9(2)(b) of the Limitation Act. Both sections have one common element, and that is, they confer an absolute right on the person who is registered as the proprietor of the land "sought to be recovered" to sue any person

who is in adverse possession of the land in question. Under s. 341 of the National Land Code and s. 9(2)(b) of the Limitation Act, the plaintiff must, currently, be the registered proprietor of the land. Section 341 of the National Land Code, therefore, envisages a situation where the land is in the possession of a person who is a stranger, or a person without right or title who squats on the land without the permission of the registered proprietor or the permission of a person entitled to an interest in the land (e.g. a beneficiary of a deceased registered proprietor). Where such a case happens, then the limitation period prescribed by s. 9(1) of the Limitation Act 1953 will not apply, and the registered proprietor or person entitled to the land, may at any time, take action to evict the stranger in adverse possession. Adverse possession of land must only mean a possession without any right or title thereto. Under s. 341 of the National Land Code, adverse possession, no matter how long it is, cannot confer title to the land, and the registered proprietor's title cannot be extinguished by the statute of limitation.

The case that I am dealing with is not one that can come under s. 341 of the National Land Code. The plaintiffs, when they filed this claim, were not the registered proprietor of the lands. The Land Administrator who gave evidence stated that he registered the defendant as the proprietor of the lands after satisfying himself that the transfer instruments (Form 14A) were in order. Therefore, the defendant has the right and title to the lands because he is the registered proprietor for the time being. The defendant is, therefore, not a person in "adverse possession" of the lands. Consequently, s. 341 of the National Land Code and s. 9(2)(b) of the Limitation Act 1953, do not apply. It follows that the plaintiffs cannot sue the defendant on the ground of "adverse possession". The plaintiffs' remedy, if any, would be under s. 340(2) of the National Land Code. They must, therefore, bring their action within 12 years from "the date on which their right of action accrued to" them, which date, as specifically pleaded by the plaintiffs in their statement of claim, is "20 May 1972".

For the reasons given, I find the claim of the plaintiffs are time barred, being 4 years outside the limitation period, and must therefore, be dismissed with costs.

I make the order that the plaintiffs' claim be dismissed with costs.

POLYGRAM RECORDS SDN. BHD.

v.

HILLARY ANG & 4 ORS. (COLLECTIVELY KNOWN AS "THE SEARCH") & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' DR. VISU SINNADURAI J.
[CIVIL SUIT NO. D2-22-52-88]
5 AUGUST 1994

CONTRACT: Two agreements signed within a space of eight months - Whether second agreement replaced the first agreement - Intention of the parties - Misrepresentation - - Undue influence - Type of relationship - Was duration of agreement manifestly disadvantageous - Non est factum - Discharge by effluxion of time - Restraint of trade - Validity - During currency of contract - Post contract restraint.

COPYRIGHT: Reassignment of copyright in songs recorded - To whom copyright belongs.

INTERPRETATION OF CONTRACT: Later clause destroys the effect of earlier clause - Whether inconsistent with the main object of the contract - Which clause prevails.

The plaintiffs are a music and sound recording company (the company). The first five defendants are the current members of a group of musicians, known as The Search (the group). On 7 October 1984, the company entered into a written agreement with the group (first contract). The contract was for a period of two years, with an option for two further periods of one year each. The group was to record minimum recordings of 24 songs in the first two years, and 20 songs during each option period. Eight months after the first contract was entered into, the company felt the need for a new contract to be entered into as there were some changes in the composition of the group. On 12 June 1985, a new contract was subsequently entered into between the company and the group (second contract). The second contract contained many provisions which were identical to that contained in the first contract. Under the second contract the group was tied to the company for a period of 6 years, whereas under the first contract, they would have been bound only for 4 years. The circumstances under which the two agreements were entered into were very unsatisfactory.